UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

LASON, INC.
Employer[1]

and Case No. 29-RC-9369

LOCAL 810, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Lewis Lieberman, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The record indicates that Lason, Inc., herein called the Employer or Lason, is a Michigan corporation with its principal office and place of business located in Troy, Michigan, and with facilities located in approximately 30 states, including a facility at

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[1] The Employer's name appears as amended at the hearing.

32-00 Skillman Avenue, Long Island City, New York, herein called the Skillman Avenue facility. The Employer is engaged in providing "information management" services for various commercial entities, such as preparing and sending bulk mail, mailgrams, and mass faxes, and converting customers' records into microfiches. During the past year, which period represents its annual operations generally, the Employer purchased and received at its Skillman Avenue facility, goods and supplies valued in excess of $50,000 directly from suppliers located outside the State of New York.

Based on the foregoing and on the stipulation of the parties, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Employer refused to stipulate that the Petitioner, Teamsters Local 810, is a labor organization within the meaning of Section 2(5) of the Act.

Section 2(5) of the Act states in its entirety:

> The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The record reveals that the Petitioner is an organization in which employees participate and which exists for the purpose of dealing with employers concerning employees' conditions of work. Specifically, one of Petitioner's business agents, Frank Savinon, testified that the Petitioner has dealt with various employers in New York, including Brand Manufacturing, Display Depot, Arthur Brown, New York Central and Sam Flax. Savinon testified that he personally has negotiated collective bargaining agreements with employers, which agreements obviously govern employees' terms and

conditions of employment. Finally, Savinon testified that employees participate in the organization, for example, by attending monthly membership meetings and by participating in the grievance procedure. Therefore, it is clear that the Petitioner is a labor organization as defined in Section 2(5) of the Act. *See also* Alto Plastics Mfg. Corp., 136 NLRB 850 (1962).

During the first day of hearing, the Employer's attorneys asked a series of questions (such as the amount of Petitioner's dues and initiation fees, whether Savinon has dealt with other "information management" companies similar to Lason, and whether the Petitioner has a strike fund) which had no bearing on whether the Petitioner meets the Act's definition of labor organization. The Petitioner's objections to those questions were properly sustained by the Hearing Officer. The Employer's attorneys also asked whether the Petitioner was under trusteeship which, likewise, has no bearing whatsoever on the Petitioner's status as a labor organization.[2] On the second day of hearing, the Employer's attorney Hawkins alleged that the Petitioner is being investigated by the New York District Attorney's office, an allegation which the Petitioner objected to as "libelous." Hawkins, *while admitting that she was "not aware of any case law on this subject*," nevertheless proceeded to assert a "possibility" that such a criminal investigation could put the Petitioner's status "in jeopardy" (Transcript, p. 117).

The Employer has not, and indeed could not have, cited any legal authority to support the proposition that those issues (dues and fees payments, strike fund,

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2 It should be noted that the Employer's post-hearing brief also gratuitously referred to the issue of trusteeship.

trusteeship or an alleged criminal investigation) affect whether a union meets the statutory definition of labor organization. I therefore reject the Employer's baseless and frivolous contentions.

For reasons discussed above -- including Petitioner's dealings with employers regarding employees' working conditions and employees' participation therein -- I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and that it claims to represent certain employees of the Employer herein.

4. The Petitioner herein initially sought to represent a unit of production and maintenance employees and drivers currently employed at the Employer's Skillman Avenue facility.[3] However, the Employer contends that the Skillman Avenue facility will undergo a dramatic expansion in early 2000, and that the current complement of bargaining-unit employees at Skillman Avenue is not "substantial and representative" at this time. The Employer therefore argues that the petition must be dismissed as premature or, alternatively, that the election must be held in abeyance until such time as a representative employee complement can vote. By contrast, the Petitioner argues that the current complement of employees at Skillman Avenue is sufficiently "substantial and representative" to vote at this time.

In support of its position on this issue, the Employer called its director of human resources for the northeast region, Karen Clawson, to testify.

The record indicates that the Employer currently operates four facilities in the New York City area. The first floor of the Skillman Avenue facility contains a mail processing center and related areas such as a letter shop, a printing area, and a computer

room. This operation performs various aspects of bulk mailing for its customers, including printing letters and other documents, folding them, inserting them into envelopes, generating computerized address lists, labeling the letters, sorting them, metering the postage and bundling them for bulk mailing. Clawson stated that there are approximately 221 hourly-paid employees employed at the Skillman Avenue facility in the following classifications: flats, floaters, labels, letter shop, dock, machine operator, meter room, porter, pre-sort, print, Q-20 (operating a machine that deals with unreadable addresses), receiving, sleeving, technicians, truck drivers, warehouse and clerical employees.[4]

The second floor of the Skillman Avenue facility is currently empty, other than some warehousing. However, the Employer is in the process of renovating the second floor, so as to be able to consolidate its three other operations there, as described below. Clawson testified that the projected completion date for construction is December 31.

Specifically, the Employer operates a facility on 19th Street in Manhattan, known as "MR," which uses cameras and scanning machines to turn customers' documents into

microfiches, and also makes microfiche-to-microfiche copies. Clawson testified that the Employer plans to move the 19th Street operation to the second floor of Skillman Avenue by late January, 2000. The Employer expects to transfer employees from 19th Street to Skillman, including 4 operators, 2 technicians and 1 clerical employee.

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3 The exact composition of the petitioned-for unit, and disputes regarding unit composition, are discussed in more detail below.

4 A disputed issue of whether to include certain clerical employees in the unit is discussed separately below.

The Employer also owns and operates Churchill Communications on Fifth Avenue in Manhattan (herein called Churchill), which processes mailgrams, mass faxes, and related data entry. Clawson testified that the Employer planned to transfer 5 letter shop employees from Churchill to the first-floor letter shop at Skillman Avenue in November or December, and that the remaining hourly employees from Churchill (including up to 6 computer-room operators, 27 data entry employees, 3 "fulfillment" employees and one clerical employee) would be transferred to Skillman Avenue in January 2000. The computer-room operators and fulfillment employees will move to the first floor of Skillman, whereas the data entry employees will move to the second floor.

Finally, the Employer operates a facility known as "UMC" on Long Island,[5] which performs high-tech document scanning and microfiche production for customers. Clawson testified that the Employer plans to move the UMC operations to the second floor of Skillman Avenue in January 2000. This move will involve the transfer of approximately 96 hourly employees in the following classifications: 3 process technicians, 10 scanners, an unspecified number of camera operators, 7 data entry employees, 5 inserting, 22 document prep, 2 material handlers, 3 truck drivers, and 2 clerical employees.[6]

The record shows that the Employer's plan to consolidate its four locations is definite, not merely speculative. As noted above, the Employer has already procured the second floor of the Skillman Avenue facility, and is in the process of construction design. Documents introduced into evidence include a blueprint dated 11/30/99

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5 Clawson also referred to UMC as "Carle Place," but its exact location is unclear from the record.

showing the second floor plan, and Lason's internal memoranda dated in May and June, 1999, notifying various managers of the consolidation (at that time, the target was December 1999). Clawson also testified that the Employer has already contracted with a moving company to move the Employer's equipment in January, although she did not know the moving company's name.

In short, the record indicates that there are currently 221 production and maintenance employees, drivers and clerical employees employed at the Employer's mail processing center on the first floor of the Skillman Avenue facility. The Employer's consolidation of its four operations into the one facility at Skillman Avenue will add approximately 129 production employees, 3 drivers, 4 additional clerical employees and 8 or 9 telemarketers.[7] (The total number of hourly employees would therefore range from 353 to 366, depending on whether the clerical employees and telemarketers are included.)

The Employer argues that the petition must be dismissed, or the election delayed, because the current Skillman Avenue employees should not be allowed to vote for the entire group, whereas the Petitioner argues that the current Skillman Avenue employees are sufficiently representative of the larger group to vote at this time.

Both the Employer and the Petitioner cite such "expanding unit" cases as Toto Industries (Atlanta), Inc., 323 NLRB 645 (1997), in their briefs to support their

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6 A group of 8 or 9 telemarketers to be transferred from UMC to Churchill are discussed separately below.

7 Toward the end of the hearing (Tr. 216), the Employer's attorney asserted that the number of additional employees being transferred at Skillman could be as high as 168, but it is not clear what evidence her assertion was based on. Even if one includes all the clerical employees and telemarketers, the witness's numbers add up to only 145 additional employees. Although the Employer's post-hearing brief cites page 160 of the transcript, that page contains no testimony regarding a number of 168 employees.

respective positions. In such cases, the Board attempts to balance competing interests between current employees and employees who will be hired in the future. As the Board stated in Toto Industries, supra:

> [C]urrent employees should not be deprived of the right to select or reject a bargaining representative simply because the Employer plans an expansion in the near future. The Board, however, does not desire to impose a bargaining representative on a number of employees hired in the immediate future, based upon the vote of a few currently employed individuals.

Id. at 645. However, these "expanding unit" cases deal with the prospective hiring of *new* employees,[8] and do not apply to the instant situation where *existing* employees at various locations are expected to move to a new location. Thus, the dilemma faced in expanding unit cases -- whether holding an early election will deprive too many unknown, *future* employees of the right to vote -- does not seem to apply here. Rather, the situation is analogous to NLRB v. AAA Alternator Rebuilders, Inc., 980 F.2d 1395, 142

LRRM 2286 (11th Cir. 1993), *enf'g* 305 NLRB 507 (1991), where employees at one location were allowed to vote in an election, even though the employer moved the entire operation to a facility 18 miles away two months later. As it turned out in that case, of the 65 voters eligible to vote at the old facility, 43 continued working in the new facility. The Circuit Court of Appeals held that the Board did not abuse its discretion in ordering

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8 The cases cited by both parties in their briefs involve the prospective hiring of new, additional employees. *See, e.g.*, Endicott Johnson de Puerto Rico, Inc., 172 NLRB 1676 (1968) (hiring new employees due to new product lines); Libbey Glass Division, Owens-Illinois, Inc., 211 NLRB 939 (1974) (hiring new employees to expand production); Bryant Electric Co., 216 NLRB 933 (1975) (hiring more electricians for construction project); St. John of God Hospital, Inc., 260 NLRB 905 (1982) (hiring new nurses to address severe shortage); Toto Industries, supra (hiring new employees to add night shifts); and Laurel Associates, Inc., d/b/a Jersey Shore Nursing and Rehabilitation Center, 325 NLRB 603 (1998) (hiring new employees to expand nursing home from 3 to 5 wings).

the election when it did, since the Board correctly "projected" that the pre-move unit of employees/voters would be a "substantial and representative complement" of the post-move unit of employees. The Court, while acknowledging that not *all* pre-move employees would continue to work at the new location, concluded that the pre-move group was sufficiently representative to hold a fair election, and emphasized the importance of allowing employees to be represented as soon as possible, if they so choose. Id., 980 F.2d at 1397, *citing* Fall River Dyeing & Finishing Corp. v. NLRB, 482 U.S. 27 (1987).

In the instant case, as noted above, Clawson testified that Lason plans to move existing employees from its 19th Street, Churchill and UMC locations to the Skillman Avenue facility in early 2000. Thus, this consolidation is expected primarily to involve transferring current employees from those locations, rather than hiring new employees. Based on the foregoing, I find that the employees currently employed at Lason's four New York locations are a substantial and representative complement of what the unit is expected to be after the consolidation,[9] and I will direct an immediate election among unit employees at all four locations. If the Petitioner wins the election, and assuming that the consolidation goes forth as planned, the Petitioner could eventually be certified (or its certification could be amended) to be representative of the consolidated unit at Skillman Avenue. I believe that this solution addresses both the Employer's concern

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9 Obviously, there may be some employees who do not transfer (e.g., to avoid a longer commute), some abolition or reclassification of duplicate jobs, and/or some new hires at the Skillman Avenue facility. My finding that employees at Lason's four locations are a substantial and representative complement of the post-consolidation unit at Skillman Avenue does not rest on an exact one-to-one identity of employees before and after the consolidation. Rather, it rests on a projection, itself based on Clawson's testimony, that a sufficient number of current employees from the four locations will be employed at the Skillman Avenue facility to fairly ensure a representative vote.

that the employees to be transferred from 19th Street, Churchill and UMC should not be deprived of the opportunity to vote, and the Petitioner's concern that the election should not be unduly delayed. Although a four-location election will admittedly be less convenient to run than a single-location election, I conclude that the importance of granting all the relevant employees their right to vote as soon as possible far outweighs any inconvenience to Board personnel or the parties.

Accordingly, I hereby deny the Employer's motion to dismiss the petition, and find that a question affecting commerce exists concerning the representation of certain employees of the Employer. I will direct an immediate election in the appropriate unit, as described below.[10]

5. The Petitioner seeks to represent a unit of all production employees, maintenance employees and drivers employed at the Employer's Skillman Avenue facility, excluding clerical employees, guards and supervisors.[11] Two classifications are in dispute. First, the Employer contends that telemarketers must be included in the unit. Second, the Employer contends that certain clerical employees must be included as "plant clericals." The Petitioner disputes these contentions, but indicated its desire to proceed to an election in any unit found appropriate herein.

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10 Because the Petitioner seeks to represent *all* production employees, maintenance employees and drivers at the Skillman Avenue facility (not a unit limited to the current mail processing employees on the first floor) I need not address the community of interest evidence in the record, such as whether the four operations will have separate supervisors after the consolidation, how much contact and interchange there will be between employees on the first and second floors, the similarities or differences between various job classifications, and whether all hourly employees will have the same benefits.

11 The petition itself seeks a unit of "*all employees*, including, but not limited to, production, maintenance and drivers, excluding clerical workers, guards and supervisors as defined by the Act" (Board Exhibit 1A, emphasis added). However, when the Employer raised the issue of including certain sales employees (telemarketers), the Petitioner objected to their inclusion. Although the Petitioner never officially amended its petition, it is obvious from the record that the Petitioner seeks to represent only the production employees, maintenance employees and drivers.

As noted above, there are 8 or 9 telemarketing employees who currently work at the Employer's UMC facility on Long Island, and who are expected to transfer to the second floor of Skillman Avenue in early 2000. The record indicates that the telemarketers sell scanning equipment, supplies and service contracts for the equipment. Clawson testified that the telemarketers are hourly-paid employees, but that they also receive some kind of incentive pay or bonus that is based on production. Telemarketers do not work in the production area, and do not touch the production machines. After the consolidation, the Employer expects that they will use the same time clock as other hourly employees, and will be eligible for the same benefits. They will also use the same cafeteria.

It is well established that a certifiable bargaining unit need only be *an* appropriate unit, not the most appropriate unit. Morand Bros. Beverage Co., 91 NLRB 409 (1950),
enf'd. 190 F.2d 576 (7th Cir. 1951), Omni-Dunfey Hotels, Inc., d/b/a Omni International Hotel of Detroit, 283 NLRB 475 (1987), P.J. Dick Contracting, 290 NLRB 150 (1988), Dezcon, Inc., 295 NLRB 109 (1989). The Board's task, therefore, is to determine whether the petitioned-for unit is an appropriate unit, even though it may not be the only appropriate unit or the "ultimate" unit. The Board has stated that, in making unit determinations, it looks "first to the unit sought by the petitioner. If it is appropriate, our inquiry ends. If, however, it is inappropriate, the Board will scrutinize the employer's proposal." Dezcon, Inc., supra, 295 NLRB at 111. In assessing the appropriateness of any proposed unit, the Board considers such community-of-interest factors as employee skills and functions, degree of functional integration, interchangeability and contact

among employees, and whether the employees have common supervision, work sites and other working terms and conditions.

In the instant case, the Employer has not shown that it would be inappropriate to exclude telemarketers from the typical production and maintenance unit requested by the Petitioner. The record indicates that telemarketers will perform an entirely different type of task (sales) than the production employees, using different equipment and working in a different area. They earn an incentive pay that is different from the other hourly employees. The record contains no evidence of functional integration, interchangeability or contact between the two groups, nor common supervision. That telemarketers will use the same time clock and cafeteria, and will be eligible for the same benefits, does not establish such a strong community of interest as to mandate their inclusion in the unit. I therefore find that the petitioned-for unit, excluding telemarketers, is appropriate.

The dispute regarding certain clerical or "administrative" employees was not identified by the Employer until the second and last day of hearing (during re-direct examination of Clawson), and was not fully explored on the record. It appears from Clawson's testimony that the Employer considers 8 hourly-paid, clerical employees to be "production clericals," as opposed to other clericals who work in separate office areas, and who do not punch a time clock. None was identified by name. Clawson testified that one clerical employee currently at Skillman Avenue spends 80% of her time on the production floor. "Production clerical" duties at the mail processing center were generally described as pulling production reports from the floor, and talking to production employees to check any errors that occurred on the production line (e.g., pieces of mail that were rejected by the post office). One of the clerical employees at

UMC (Carle Place) was also described as spending 100% of her time in the production area there, although her exact duties were not detailed, and Clawson admitted that she does not know whether her duties will change when the UMC employees move to Skillman. On the other hand, the other "production" clerical employees, including at least two receptionists, were described as spending 80% to 100% of their time in offices away from the production areas. There is also an "administrative" employee who delivers and installs hardware systems and acts as a trouble-shooter for various computers around the Skillman Avenue facility. It is not clear if this employee handles computers related to production (e.g., generating the computerized address lists for bulk mailing), or only the computers related to office/administrative functions (e.g., payroll, accounting, and billing).

The Board generally finds it inappropriate to exclude true "plant clerical" employees -- who work closely with employees in production areas, and whose duties are directly related to the production process -- from production and maintenance units. Raytee Co., 228 NLRB 646 (1977); Brown & Root, Inc., 314 NLRB 19 (1994). Unfortunately, it is impossible to determine from this record which employees are true plant clericals. Based on Clawson' sketchy testimony, it appears that some may be, and others may not be. Consequently, I have decided to include the classification of "plant clerical employees" in the unit of production employees, maintenance employees and drivers, and to exclude "office clerical employees." However, specific determinations of which employees are eligible as plant clericals will have to be resolved later, either by the challenged ballot procedure, the parties' negotiations, or a unit clarification proceeding.

Accordingly, I hereby find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:[12]

> All full-time and regular part-time production employees, maintenance employees, drivers and plant clerical employees employed by the Employer at 32-00 Skillman Avenue, Long Island City, New York; the "MR" facility on 19th Street, Manhattan, New York; the Churchill facility on Fifth Avenue, Manhattan, New York; and the "UMC" facility on Carle place in Long Island, New York; but excluding office clerical employees, sales employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate, at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those

[12] Notwithstanding that the unit found appropriate herein is larger than the originally-petitioned-for unit, the agency has determined that Petitioner has submitted an adequate showing of interest.

eligible shall vote whether they desire to be represented for collective bargaining purposes by Local 810, International Brotherhood of Teamsters, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201, on or before December 17, 1999. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies

of the election notices unless it notifies the Regional Office at least five working days prior to the commencement of the election that it has not received the notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by December 24, 1999.

Dated at Brooklyn, New York, this 10th day of December, 1999.

/S/ ALVIN BLYER

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